

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

ERP IRON ORE, LLC,

Debtor.

Case No. 18-50378 (WJF)  
Chapter 7

**NOTICE OF SETTLEMENT OR  
COMPROMISE ON SHORTENED  
NOTICE**

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TO: The United States Trustee, all creditors and other parties in interest:

On August 22, 2019, or as soon thereafter as the transaction may be completed and subject to objection under applicable rules, the trustee will settle a controversy as follows:

Progress Rail Leasing Corporation (“Progress Rail”), Wilmington Savings Fund Society, FSB, (“Wilmington”), Merida National Resources, LLC (“Merida”), Thomas M. Clarke and Ana M. Clarke (the “Clarkes”) (Progress Rail, Wilmington, Merida and the Clarkes are collectively referred to as the “Plaintiff Group”) commenced an adversary proceeding against White County, Indiana (“White County”), Nauni Mandy (the “Chapter 7 Trustee”) and Lighthouse Management Group, Inc. (“Lighthouse”) (White County, the Chapter 7 Trustee and Lighthouse are collectively referred to as the “Defendants”). *See* ADV. 18-05034. The adversary proceeding is seeking to, among other things, determine (i) the validity, priority and extent of White County’s claim; (ii) the validity, priority and extent of various liens or interests that White County has in the sale proceeds of the Indiana assets; and (iii) the validity, priority, and extent of Progress Rail’s claim and lien in the Indiana sale proceeds. The parties have resolved issues in connection with the claims of Progress Rail and White County in connection with ADV. 18-05034. A mediation has been scheduled in connection with the remaining claims in connection with the adversary proceeding for August 23, 2019.

The Chapter 7 Trustee is holding the net sale proceeds from the sale of the Indiana assets. The settlement provides that Progress Rail shall receive \$5,000,000 for its allowed secured claim, plus \$100,000 attorneys’ fees and costs. Upon payment of the \$5,100,000, Progress Rail’s claim shall be fully satisfied. Progress Rail and the Chapter 7 Trustee have also mutually released all claims against one another. Progress Rail shall withdraw its claim, Claim No. 20, filed in the bankruptcy case.

White County shall receive payment of \$1,075,000 in connection with its secured claim, which shall fully satisfy the secured claim of White County against the sale proceeds. The Plaintiffs’ Group agrees not to object to or oppose White County’s submission of an unsecured claim in the bankruptcy case in the amount of no less than \$7,320,021.50. The Plaintiff’s Group agrees not to object to or oppose White County’s submission of a priority unsecured claim under Section 507(a)(8) of the Bankruptcy Code in the amount of no less than \$1,370,255.10 for personal property taxes due from the debtor between May 25, 2017 and the petition date. However, the

Chapter 7 Trustee reserves and preserves her rights to object to the priority and unsecured claims of White County.

Within three days of the entry of the order approving this settlement, White County shall withdraw its Motion for Determination that the Automatic Stay Does Not Apply or, in the Alternative, For Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) (ECF No. 413) (the “Stay Motion”). The Plaintiffs Group waives any claim, right, or entitlement it may have, or assert, to recover payments received by White County related to the Indiana Sale Proceeds or TIF Revenues (as defined in the Stay Motion) and acknowledge that the pledge of such TIF Revenues under the Trust Indenture (as defined in the Stay Motion) is unenforceable. The Plaintiffs Group and Trustee, on behalf of herself and of ERP Iron Ore, LLC’s estate, agree to the relief requested in the Stay Motion, including, but not limited to, a determination that the automatic stay of § 362(a) is lifted to provide White County with any and all authority to issue notices of default to the Debtor and the Bond Trustee (as defined in the Stay Motion) under Section 5.1(a) of the Loan Agreement (as defined in the Stay Motion) and Section 7.2(b) of the Trust Indenture (as defined in the Stay Motion). The Chapter 7 Trustee, however, reserves the estates rights in any claims she may have against White County in connection with the TIF Revenue.

Within five days of court approval of the Notice of Settlement, the trustee shall disburse \$5,100,000 to Progress Rail and \$1,075,000 to White County. Wilmington, Merida, the Clarkes, Lighthouse and the Chapter 7 Trustee reserve their rights with respect to any claims that they may assert with respect to the remaining Indiana sale proceeds, secured or otherwise being held by the Chapter 7 Trustee.

Shortened notice of the Notice of Settlement is necessary because a mediation has been scheduled for August 23, 2019. As such, Progress Rail and White County require approval of the settlement before the mediation date. Because the trustee believes the settlement is in the best interests of creditors, the trustee requests that the settlement be approved as the costs of litigation will quickly offset any recovery to the estate.

**OBJECTION: MOTION: HEARING.** Under applicable rules, any objection must be in writing, be delivered to the trustee and the United States Trustee, and be filed with the clerk, not later than 12:00 o’clock noon on the day before the above date. If an objection is made or an order is required, the trustee moves the court for such orders as may be necessary and appropriate. If an objection is timely delivered and filed, the court will hold an expedited hearing on the objection with reduced notice of the hearing. The trustee will schedule the hearing with notice by the trustee to the objecting party and the United States Trustee.

United States Bankruptcy Court  
404 U.S. Courthouse  
515 West First Street  
Duluth, MN 55802

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Nauni Mandy, Trustee  
401 Second Avenue North  
Suite 400  
Minneapolis, MN 55401

Dated: August 14, 2019.

Signed: /e/Nauni Mandy, Trustee  
Nauni Mandy, Trustee